

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IRMA WALKER and DEPARTMENT OF THE AIR FORCE,
SAN ANTONIO AIR LOGISTICS CENTER, KELLY AIR FORCE BASE, TX

*Docket No. 03-561; Submitted on the Record;
Issued September 12, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying authorization for neuromuscular therapy.

On March 15, 1985 appellant then a 54-year-old program analyst, slipped and fell injuring her hands and knees. The Office accepted her claim for right knee strain; contusions of both hands; bilateral carpal tunnel syndrome; and herniated discs at L4-5 and C6-7. She stopped work on March 15, 1985 and returned on March 18, 1985. Appellant stopped work completely on February 17, 1987.

Appellant submitted various medical records from the employing establishment's physician dated April 15, 1985; a report from Dr. Milton C. Butler, a family practitioner, dated March 21, 1985; medical reports from her treating physician Dr. George M. Rapier, III, a Board-certified internist, dated 1985 to 1991; and Dr. Angel M. Roman, Board-certified in physical medicine and rehabilitation, dated February 1990 to July 1991. The employing establishment's physician noted treating appellant for minor bruising of the hands and knees with no visual evidence of injury. He indicated that appellant slipped and fell and diagnosed her with sprain of the right knee and bruised hands. Dr. Butler noted treating appellant after her work injury of March 15, 1985 and diagnosed her with muscle strains, which would resolve themselves within a week's time. He advised that she could work without restrictions and that he did not anticipate impairment as a result of this injury. Dr. Rapier noted treating appellant for work-related injuries to her hands and knees. He noted that appellant continued to experience cervical problems and in a report dated June 12, 1991, recommended that she seek treatment from Paul M. Frizzell, a massage therapist. Dr. Roman noted a history of appellant's work-related injuries and treated her for multiple complaints including back and neck pain. He indicated that appellant had persistent cervical and lower back pain due to the traumatic injury she sustained at work. Dr. Roman's report of July 17, 1991 noted that appellant's back complaints were permanent and chronic. He recommended that appellant continue with neuromuscular therapy with Mr. Frizzell. Dr. Roman continued to support total temporary disability due to her work-related injury.

In the course of developing appellant's claim, the Office referred her to several second opinion physicians from 1991 to 1999 and an Office medical adviser.

Subsequently, appellant submitted report's from Dr. Rapier and Dr. Roman from 1991 to 1999, which continued to support neuromuscular therapy for her.

The Office referred appellant for a second opinion examination to Dr. Theodore Parsons, a Board-certified orthopedic surgeon, to determine the appropriateness of continued physical therapy for her work-related injuries and recommended work restrictions. In a report dated January 29, 2000, Dr. Parsons indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of her work-related injury. Dr. Parsons indicated that it was untenable to imagine that appellant has been unable to work for the last 13 years because of a fall from the standing position onto her hands and knees. He indicated that appellant appeared to be suffering from a psychological association with chronic pain. Dr. Parsons found no need for ongoing, excessive, continuing hands on therapy. He determined that appellant would not likely receive any significant anatomic or physiologic benefit from such treatment. Dr. Parsons noted appellant's examination was commensurate with her age. He noted that ongoing therapy was unreasonable and not likely to benefit appellant any further.

Appellant submitted reports from Dr. Rapier and Dr. Roman from January to March 2000, which continued to support neuromuscular therapy for her on a tapered schedule.

The Office determined that a conflict of medical opinion had been established between Drs. Roman and Rapier, appellant's treating physicians, who indicated that she required continued neuromuscular therapy and the Office referral physician, who determined that there were no objective findings to support appellant's continued need for neuromuscular therapy and that the therapy was excessive and not likely to benefit her.

To resolve the conflict appellant was referred to an impartial medical specialist, Dr. Eradio Arredondo, a Board-certified orthopedic surgeon, who indicated, in a report dated April 11, 2000, that he reviewed the records provided to him and performed a physical examination of appellant. Dr. Arredondo noted a history of her work-related injury. He diagnosed appellant with chronic neck, upper extremity, low back and right lower extremity pain, status post fall in 1985. Dr. Arredondo noted upon physical examination that range of motion was normal for the lumbosacral spine and cervical spine; there was no tenderness of the neck or back area; the neurological examination of the upper and lower extremities was normal; the range of motion for the right shoulder was normal; the range of motion for the right knee was excellent; there was a negative Tinel's sign; a negative Phalen's sign; and the range of motion for the ankles was normal. He concluded that appellant's physical examination was essentially normal for a woman of her age. Dr. Arredondo noted that there was no evidence that appellant's right knee strain or carpal tunnel syndrome was active or disabling. He noted that there was objective evidence that appellant had problems of the L4-5 area and at several levels of her neck; however, he believed these conditions could be managed with minimal drug therapy intervention. Dr. Arredondo stated that he did not see a need for appellant to be undergoing any treatment on a weekly basis of any sort and at most, she should be seen every three months by a family physician. He noted that there was no need for ongoing physical therapy.

Appellant submitted reports from Dr. Roman dated June 15, 2000 to March 20, 2001; and from Dr. Rapier dated June 23, 2000 to March 7, 2001, which were similar to their earlier reports. Dr. Roman indicated in his reports that he disagreed with Dr. Arredondo regarding his conclusions for ongoing therapy. He noted that there were omissions of important information in Dr. Arredondo's report. Dr. Roman indicated that appellant tried other modalities for her conditions such as injections and medications and experienced negative reactions. He believed that appellant benefited from the treatment of Mr. Frizzell. Dr. Rapier also indicated that neuromuscular treatment was beneficial to appellant.

In a letter dated May 23, 2001, the Office noted that it had authorized and reimbursed physical therapy services for appellant for the period June 28, 1991 to June 3, 2000. The Office requested that Dr. Roman provide additional medical information before any further reimbursement was authorized.

In a report dated August 31, 2001, Dr. Roman noted that appellant had two work-related injuries for which physical therapy would be administered, which would include a cervical spine injury and a lower lumbar injury. He noted that the weakness of the right arm and leg, impaired range of motion of the cervical and lumbar spine and chronic pain are deficits which would be treated by the physical therapy.

In a decision dated February 15, 2002, the Office denied appellant's request for ongoing neuromuscular therapy finding that the weight of the medical evidence established that such treatment was not reasonable and necessary for treatment of her accepted condition.

In a letter dated March 13, 2002, appellant requested an oral hearing before an Office hearing representative. The hearing was held on July 23, 2002. Appellant submitted various reports from Dr. Roman dated March 4 to August 28, 2002. He noted in his reports of March 4, May 7 and July 12, 2002 that appellant continued to have cervical pain and lumbar pain syndrome secondary to her work-related injury with herniations. Dr. Roman's reports of July 10 and August 28, 2002 noted appellant's continued complaints and he asserted that her condition was worsening due to the refusal of the Office to approve neuromuscular therapy.

In a decision dated October 9, 2002, the hearing representative affirmed the decision of the Office dated February 15, 2002.

The Board finds that the Office did not abuse its discretion in denying authorization for neuromuscular therapy.

Section 8103(a) of the Federal Employees' Compensation Act,¹ provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the

¹ 5 U.S.C. § 8103(a).

Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.²

In interpreting section 8103 of the Act,³ the Board has explained in the case of *Daniel J. Perea*,⁴ that the Office, acting as the delegated representative of the Secretary of Labor, has broad discretion in approving services, appliances and supplies provided under the Act. As the Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time, the Office, therefore, has broad administrative discretion in choosing means to achieve this goal. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. The only limitation on the Office's authority is that of reasonableness.⁵

In this case, the Office accepted appellant's claim for right knee strain, contusions of both hands, carpal tunnel syndrome and herniated discs at L4-5 and C6-7 and paid appropriate compensation. The Office reviewed and developed the medical evidence and determined that a conflict existed in the medical evidence between appellant's attending physicians, Drs. Rapier and Roman, who disagreed with Dr. Parsons, an Office referral physician, concerning whether appellant had any continuing need for neuromuscular therapy. Consequently, the Office referred appellant to Dr. Arredondo to resolve the conflict.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁶

The Board finds that, under the circumstances of this case, the opinion of Dr. Arredondo is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight.

In a report dated April 11, 2000, Dr. Arredondo found no basis on which to support continued physical therapy. He reviewed appellant's history and noted his findings and diagnoses and essentially determined that appellant's status was normal for someone who was almost 70 years old. Dr. Arredondo reported no significant objective examination findings except for the neck and lumbar spine. However, he concluded that neither the neck nor the lumbar spine conditions were disabling for appellant's date-of-injury job and that they could be treated with "minimal drug therapy intervention." Dr. Arredondo also supported his opinion by noting that, despite years of therapy, appellant's functional level had remained essentially the

² See *Robert S. Winchester*, 54 ECAB ____ (Docket No. 00-800, issued November 8, 2002); *Dona M. Mahurin*, 54 ECAB ____ (Docket No. 01-1032, issued January 6, 2003); *Wayne G. Rogers*, 54 ECAB ____ (Docket No. 01-116

³ *Id.*

⁴ See *Daniel J. Perea*, 42 ECAB 214 (1990).

⁵ See *Dona M. Mahurin*, *supra* note 2; *Wayne G. Rogers*, *supra* note 2; *Thomas Lee Cox*, 54 ECAB ____ (Docket No. 02-1286, issued March 26, 2003).

⁶ *Aubrey Belnavis*, 37 ECAB 206 (1985).

same since the time of her injury. He found no basis on which to attribute a need for continuing physical therapy due to the accepted employment injury. Dr. Arredondo stated that he did not see a need for appellant to be undergoing any treatment on a weekly basis of any sort and at most, she should be seen every three months by a family physician.

Appellant submitted several reports from Dr. Roman dated August 31, 2001 to August 28, 2002, which continued to support the need for neuromuscular therapy.

However, these reports were essentially repetitive of other reports in the record and did not contain new findings or rationale upon which a new conflict might be based. Therefore, these reports are insufficient to overcome that of Dr. Arredondo or to create a new medical conflict.⁷

The Board finds that, under the circumstances of this case, the opinion of Dr. Arredondo is sufficiently well rationalized and based upon a proper factual background such that it is the weight of the evidence and established that neuromuscular therapy was not necessary nearly 15 years after the work-related injury.

The Board finds that the Office did not abuse its discretion in finding that the evidence of record failed to support that the neuromuscular therapy is “likely to cure, give relief and reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.”

The October 9, 2002 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, DC
September 12, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).